

medley Farm  
10.12

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
RALPH C. MEDLEY, et al.	)	
	)	CIVIL ACTION NO. 7-86-252-3
	)	
Defendants.	)	
_____	)	

CONSENT DECREE

This Decree is made and entered into by and between the United States of America ("Plaintiff") and all defendants, cross-claimants, counter-claimants, third-party plaintiffs and third-party defendants ("Settling Defendants") in this action; Ralph C. Medley, Clyde Medley, Grace Medley, Barry Medley, Milliken and Company, Unisphere Chemical Corporation, National Starch and Chemical Corporation, ABCO Industries, Inc., BASF Corporation, Ethox Chemicals, Inc., ~~Flu~~aymer Industries, division \_\_\_\_\_ of Morton-Thiokol, Inc. and Tanner Chemical Company.

WHEREAS, the United States, on behalf of the Administrator of the Environmental Protection Agency ("EPA"), filed a complaint in this action on January 30, 1986, which action was brought pursuant to Sections 104(a) and (b) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980

("CERCLA"), 42 U.S.C. §§ 9604(a) and (b) and 9607(a), for recovery of costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances at the Medley Farm Site ("Site") near Gaffney, South Carolina and pursuant to 28 U.S.C. § 2201 for a declaratory judgment of liability for all future response costs incurred in connection with the site;

WHEREAS, several parties have filed third-party complaints, cross-claims and counterclaims seeking contribution and/or indemnity for response costs for which said parties may be found liable;

WHEREAS, Plaintiff alleged that it has incurred and will incur response costs in connection with the cleanup of the Medley Farm Site as described in Plaintiff's Complaint;

WHEREAS, Plaintiff alleges that Settling Defendants are liable for past and future response costs associated with the cleanup of the Medley Farm Site;

WHEREAS, the Medley Farm Site has been proposed for inclusion on the fifth update to the National Priorities List (Appendix B to the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300 et seq.);

WHEREAS, the parties agree that a Remedial Investigation and Feasibility Study ("RI/FS") may be needed for the Medley Farm Site in order to determine the nature and extent of contamination and to determine the appropriate remedy, if any is required, at the site;

WHEREAS, the parties agree that this Consent Decree constitutes a settlement only of Settling Defendants' liability for response costs incurred by the United States at the Medley Farm Site up to and <sup>including</sup> including the date of entry of this Consent Decree; and

WHEREAS, the Plaintiff and Settling Defendants agree that settlement of Settling Defendants liability for past response costs and execution of this Consent Decree without further litigation and without any admission as to liability is the most appropriate means of resolving this part of Plaintiffs' claim and is in the public interest.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED and follows:

I.

JURISDICTION

This Court has subject matter jurisdiction over this matter and has personal jurisdiction over the parties hereto pursuant to 42 U.S.C. §§ 9604(a) and (b) and 9613(b) and 28 U.S.C. §§ 1345 and 2201. The Complaint of the United States <sup>states</sup> a claim <sub>A</sub> upon which relief can be granted. The parties hereto agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding arising from it.

II.

PARTIES BOUND

This Consent Decree shall apply to and be binding upon the Settling Defendants, their officers, directors, agents, servants, employees, successors in interest and assigns, and upon all persons, firms, subsidiaries, divisions, and corporations acting under or for them and upon the United States on behalf of the U.S. EPA. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Decree and to execute and to legally bind such signatory to this Consent Decree.

III.

DEFINITIONS

Certain terms used in this Consent Decree are defined as follows:

- A. The "Medley Farm Site" means the waste disposal facility owned, as of the date of this Consent Decree, by Ralph C. Medley located at or near County Road 72 (Burnt Gin Road) near Gaffney, Cherokee County, South Carolina.

- B. "Response Costs" means all costs, including administrative and enforcement costs, incurred by the United States pursuant to CERCLA and any other applicable laws relating to removal and response actions undertaken prior to the date of entry of this Decree in connection with the Medley Farm Site.
- C. Any term not otherwise defined herein shall have the definition provided in 42 U.S.C. § 9601.

IV.

REIMBURSEMENT FOR PAST COSTS

Within thirty (30) days of the entry of this Consent Decree, the Settling Defendants shall pay a total of five hundred and \_\_\_\_\_ thousand dollars ( ) to the United States in reimbursement of response costs incurred by the United States with respect to the Medley Farm Site up to and including the date of entry of this Consent Decree. This amount shall be made payable by certified or cashiers check to the "EPA Hazardous Substances Response Trust Fund" and shall be remitted to U.S. EPA Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251. The transmittal of such payment shall reference that the payment is for response costs incurred at the Medley Farm Site and shall be accompanied by correspondence identifying United States v. Ralph C. Medley et al., Civil Action No. 7-86-252-3, DOJ File Number 90-11-3-104, EPA File Numbers and the identity of the paying party.

V.

RELEASES

- A. In consideration of the payment set forth in Section III above, the United States releases Settling Defendants from civil liability for response costs incurred by the United States at the Medley Farm Site pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9607, up to and including the date of entry of this Consent Decree.
- B. Nothing in this Consent Decree shall release the Settling Defendants from liability for response costs, if any, incurred by the United States after the date of entry of this decree in connection with any future response to the release or threatened release of hazardous substances into the environment from the Medley Farm Site including, but not limited to, conduct of a Remedial Investigation/ Feasibility Study at the site and remedial action.
- C. This release shall not extend to any person or legal entity other than the Settling Defendants.
- D. Settling Defendants hereby remise and release the United States from any and all liability for actions taken and expenditures made by the United States, its agents and employees prior to the entry of this Consent Decree in responding to the release or threatened release of hazardous substances into the environment from the Medley Farm Site. Further,

Settling Defendants agree not to assert any causes of action, claims or demands against the United States for reimbursement from the Hazardous Substances Response Trust Fund, 42 U.S.C. § 9631, including claims pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. §§ 9611, 9612, or assert any other claims or demands for sums paid in settlement of past response costs or arising from any activity performed or expenses incurred pursuant to this litigation or under this Decree.

- E. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

VI.

RESERVATION OF RIGHTS

The Plaintiff and Settling Defendants acknowledge that this Consent Decree does not prejudice, waive or release, any claim or cause of action that the United States may have against Settling Defendants or any other responsible party for injunctive relief or for future response costs which may be incurred by the United States in connection with the Medley Farm Site. Nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, against Settling Defendants or against any other person or entity not a party to this Decree under Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607. Any claim or defense which the Plaintiff

or Settling Defendants may have against any other person or entity not a party of this Decree, including but not limited to, claims for indemnity or contribution, is expressly reserved.

In any subsequent action brought under CERCLA by the United States for injunctive relief or recovery of response costs incurred after entry of this Decree, relating to the release or threatened release of hazardous substances into the environment from the Medley Farm Site, the Settling Defendants shall not assert that the United States is in any manner precluded or barred from instituting such an action by the principles of res judicata or rules against claim splitting.

VII.

RETENTION OF JURISDICTION

The Court shall retain jurisdiction of this matter for the purpose of enforcing timely payment of the amount set forth in Section III above.

VIII.

TERMINATION

Upon timely payment of the amount set forth in Section III above by Settling Defendants, the United States and Settling Defendants will jointly file a Stipulation of Dismissal, with prejudice, as to the United States' claim for past response costs incurred through the date of entry of the Decree and without prejudice as to the government's right to institute an action for future response costs or for injunctive or other relief under Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Consent Decree and submit it to the Court, that it may be approved and entered.

FOR THE PLAINTIFF:

FOR THE SETTLING DEFENDANTS:

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U.S. Department of Justice

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APPROVED AND ENTERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1986.

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G. ROSS ANDERSON, JR.  
United States District Judge  
District of South Carolina